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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 SAN JOSE DIVISION

7
8 MORELAND APARTMENTS
ASSOCIATES, et al.,
9 Plaintiffs,
10 v.
11 LP EQUITY LLC,
12 Defendant.

Case No. [5:19-cv-00744-EJD](#)

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS; ORDER
DENYING IN PART AND GRANTING
IN PART DEFENDANT'S
ADMINISTRATIVE MOTION TO FILE
PARTS OF ITS MOTION TO DISMISS
UNDER SEAL**

13 Re: Dkt. Nos. 27, 29

14 Plaintiffs Moreland Apartments Associates, Seaside Apartments Associates, and San Jose
15 Apartments Associates allege that Defendant LP Equity misappropriated trade secrets, engaged in
16 unfair competition, and intentionally interfered with contractual relations. *See* First Amended
17 Complaint ("FAC"), Dkt. 25. The Court finds this motion suitable for consideration without oral
18 argument. *See* N.D. Cal. Civ. L.R. 7-1(b). Having considered the Parties' papers, Defendant's
19 motion to dismiss is **GRANTED**.

20 **I. BACKGROUND**

21 **A. Factual Background**

22 Plaintiffs are limited partnerships formed in the 1980s to acquire real property in California
23 and to "construct, own, hold, lease, and operate" apartment projects. FAC ¶¶ 9–11. Defendant
24 purchases limited partnership interests. *Id.*, Ex. A.

25 In 2015, Defendant began soliciting some of Plaintiffs' limited partners, asking if they
26 would be interested in selling their limited partnership interest. *Id.* ¶ 12; *Id.*, Ex. A. As Exhibit A

27 Case No.: [5:19-cv-00744-EJD](#)
28 ORDER GRANTING DEFENDANT'S MOTION TO DISMISS; ORDER DENYING IN PART
AND GRANTING IN PART DEFENDANT'S ADMINISTRATIVE MOTION TO FILE PARTS
OF ITS MOTION TO DISMISS UNDER SEAL

1 shows, the letters requested that the limited partner, if interested in selling their interest, send a K-
2 1 form to Defendant. *Id.* ¶ 11; *Id.*, Ex. A. Defendant specifically requested that interested limited
3 partners “black out or remove [their] social security number on the K-1” form before mailing it to
4 Defendant. *Id.*, Ex. A. Allegedly, many of the limited partners are elderly, unsophisticated
5 investors who are “ignorant of the[ir] investment, its value, and the tax implications associated
6 with a sale of the security.” *Id.* ¶ 19. Plaintiffs contend that Defendant’s solicitation was
7 “aggressive [and] predatory.” *Id.* ¶¶ 12, 17.¹

8 Plaintiffs further allege that Defendant solicited limited partners in a manner that violated
9 the partnership terms. *Id.* ¶ 22. The transfer of a limited partnership interest requires written
10 approval of the general partners. *Id.* Despite knowing this, Defendant only solicited the limited
11 partners to evade the terms of the limited partnership agreement and to coerce the limited partners
12 to breach their contract with Moreland. *Id.*

13 Plaintiffs contend that Defendant obtained the identities and personal information, *i.e.*,
14 home addresses, home and cellular phone numbers, and social security numbers, of Plaintiffs’
15 limited partners through improper means. *Id.* ¶ 23. Plaintiffs argue that this information
16 constitutes trade secrets. *Id.* ¶¶ 25–26. Plaintiffs further allege that Defendant engaged in
17 malicious acts to purchase the limited partners’ interests and that Defendant’s solicitations were
18 misleading. *Id.* ¶ 45. Lastly, Plaintiffs argue that Defendant intentionally disrupted the
19 performance of Plaintiffs’ limited partners under the partnership agreement. *Id.* ¶ 53.

20 **B. Procedural History**

21 On May 21, 2019, Plaintiffs filed their First Amended Complaint. *See generally* FAC.
22 Defendant filed a Motion to Dismiss Plaintiffs’ First Amended Complaint on June 4, 2019.

23

24 ¹ Plaintiffs contend in their Opposition that Defendant also engaged in “multiple telephone calls
25 and correspondence to these limited partners to obtain their K1 tax forms.” Moreland Apartments
26 Associates et al.’s Opposition to Defendant’s Motion to Dismiss (“Opp.”), Dkt. 30. The First
Amended Complaint, however, does not allege that Defendant called limited partners. *See generally* FAC.

27 Case No.: [5:19-cv-00744-EJD](#)

28 ORDER GRANTING DEFENDANT’S MOTION TO DISMISS; ORDER DENYING IN PART
AND GRANTING IN PART DEFENDANT’S ADMINISTRATIVE MOTION TO FILE PARTS
OF ITS MOTION TO DISMISS UNDER SEAL

1 Defendant's Motion to Dismiss ("Mot."), Dkt. 29. On June 17, 2019, Plaintiffs filed an
2 opposition. Moreland Apartments Associates et al.'s Opposition to Defendant's Motion to
3 Dismiss ("Opp."), Dkt. 30. Defendant filed its reply on June 24, 2019. Reply in Support of
4 Defendant's Motion to Dismiss ("Reply"), Dkt. 31. Defendant also filed a motion to seal. *See*
5 Administrative Motion to File Under Seal Documents in Support of Its Motion to Dismiss ("Admin
6 Mot."), Dkt. 27.

7 **II. LEGAL STANDARD**

8 To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient factual
9 matter, accepted as true, to "state a claim for relief that is plausible on its face." *Ashcroft v. Iqbal*,
10 556 U.S. 662, 678 (2009) (discussing Federal Rule of Civil Procedure 8(a)(2)). A claim has facial
11 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable
12 inference that the defendant is liable for the misconduct alleged. *Id.* The requirement that the
13 court must "accept as true" all allegations in the complaint is "inapplicable to legal conclusions."
14 *Id.* "[F]ormulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v.*
15 *Twombly*, 550 U.S. 544, 555 (2007). Legal conclusions, without more, give rise to "unwarranted
16 inferences . . . insufficient to avoid a Rule 12(b)(6) dismissal." *Cousins v. Lockyer*, 568 F.3d
17 1063, 1067 (9th Cir. 2009) (quotation marks and citation omitted).

18 Dismissal can be based on "the lack of a cognizable legal theory or the absence of
19 sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901
20 F.2d 696, 699 (9th Cir. 1990). When a claim or portion of a claim is precluded as a matter of law,
21 that claim may be dismissed pursuant to Rule 12(b). *See Whittlestone, Inc. v. Handi-Craft Co.*,
22 618 F.3d 970, 975 (9th Cir. 2010) (discussing Rule 12(f) and noting that 12(b)(6), unlike Rule
23 12(f), provides defendants a mechanism to challenge the legal sufficiency of complaints).

24 **III. DISCUSSION**

25 **A. Misappropriation of Trade Secrets**

26 Plaintiffs allege two theories to support their misappropriation of trade secrets claim: (1)

27 Case No.: [5:19-cv-00744-EJD](#)
28 ORDER GRANTING DEFENDANT'S MOTION TO DISMISS; ORDER DENYING IN PART
AND GRANTING IN PART DEFENDANT'S ADMINISTRATIVE MOTION TO FILE PARTS
OF ITS MOTION TO DISMISS UNDER SEAL

1 they base their first claim for relief in the Defend Trade Secrets Act (“DTSA”), see 18 U.S.C.
2 § 1836, and (2) they base second claim for relief in the California Uniform Trade Secrets Act
3 (“CUTSA”), see Cal. Civ. Code § 3426.² FAC ¶¶ 24–43. For purposes of a motion to dismiss,
4 “the elements of CUTSA and DTSA claims are substantially the same.” *Genentech, Inc. v. JHL*
5 *Biotech, Inc.*, 2019 WL 1045911, at *10 (N.D. Cal. Mar. 5, 2019).

6 To state a claim for misappropriation of trade secrets, a plaintiff must allege that: “(1) the
7 plaintiff owned a trade secret; (2) the defendant misappropriated the trade secret; and (3) the
8 defendant’s actions damaged the plaintiff.” *Autodesk, Inc. v. ZWCAD Software Co., Ltd.*, 2015
9 WL 2265479, at *5 (N.D. Cal. May 13, 2015). A protectable “trade secret” means “all forms and
10 types of financial, business, scientific, technical, economic, or engineering information” that (1)
11 derives independent economic value, actual or potential, from not being generally known to
12 competitors or the general public and (2) is subject to reasonable measures to maintain its secrecy.
13 Cal. Civ. Code § 3426.1; 18 U.S.C. § 1839(3).

14 Information that is “readily obtainable through public sources” is not a trade secret because
15 it cannot derive independent economic value. *See Experian Info. Sols., Inc. v. Nationwide Mktg.*
16 *Servs. Inc.*, 893 F.3d 1176, 1188 (9th Cir. 2018) (“The subject matter of trade secrets ‘must be
17 sufficiently novel, unique, or original that it is not readily ascertainable to competitors.’ Arizona
18 courts have considered customer lists and have held that a trade secret cannot ordinarily consist of
19 matters of public knowledge.” (citation omitted)); *Nextdoor.com, Inc. v. Abhyanker*, 2014 WL
20 1648473, at *4 (N.D. Cal. Apr. 23, 2014) (“Information that is generally known to the public or in
21 an industry lacks the requisite secrecy. Information that an individual discloses to others who are
22 under no obligation to protect its confidentiality also lacks secrecy. A disclosure need not be
23 widespread to defeat trade secret protection; it is defeated if no reasonable effort was made to

24
25 ² Plaintiffs allege that this Court has federal-question jurisdiction over Plaintiffs’ federal trade
secret claim and supplemental jurisdiction over the related state law claims. FAC ¶ 1. In the
26 alternative, Plaintiffs allege this Court has diversity jurisdiction. *Id.* Defendants do not dispute
this, and the Court sees no reason to reject Plaintiffs’ jurisdictional contentions.

27 Case No.: [5:19-cv-00744-EJD](#)

28 ORDER GRANTING DEFENDANT’S MOTION TO DISMISS; ORDER DENYING IN PART
AND GRANTING IN PART DEFENDANT’S ADMINISTRATIVE MOTION TO FILE PARTS
OF ITS MOTION TO DISMISS UNDER SEAL

1 maintain secrecy.”).

2 Defendant argues that the names of the limited partners are not trade secrets because they
3 are publicly available. The Court agrees. The list of Plaintiffs’ limited partners’ names is not a
4 protectable trade secret pursuant to DTSA or CUSTA because, as Exhibits 1–5 show, all the
5 limited partners names are “readily available through public sources.” *Liberty Mut. Ins. Co. v.*
6 *Gallagher & Co.*, 1994 WL 715613, at *5 (N.D. Cal. Dec. 19, 1994).³ Exhibit 3 lists the names of
7 Moreland Apartment Associates’ limited partners. Exhibit 4 lists the names of Seaside Apartment
8 Associates’ limited partners. Finally, Exhibit 5 lists the names of the San Jose Apartment
9 Associates’ limited partners and is publicly available to anyone online. The disclosed names of
10 Plaintiffs’ limited partners cannot constitute trade secrets. *See Memry Corp. v. Ky. Oil Tech.*,
11 N.V., 2006 WL 3734384, at *4 (N.D. Cal. Dec. 18, 2006) (“In light of the requirement of secrecy,
12 it is clear that an unprotected disclosure of a trade secret terminates its existence.”).

13 Defendant next argues that the limited partners’ phone numbers and addresses are not trade
14 secrets because they are publicly available. The Court agrees. Defendant asks this Court to take
15

16 ³ Defendant asks this Court to take judicial notice of Exhibits 1–5. The Court may take judicial
17 notice of facts not subject to reasonable dispute because its accuracy can be readily determined
18 from sources whose authenticity cannot reasonably be questioned. *See Fed. R. Evid. 201(b)*.
19 Exhibits 1, 2, and 5 are publicly available on government websites and are thus subject to judicial
20 notice. *See Gerritsen v. Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1033 (C.D. Cal. 2015)
21 (taking judicial notice of “[p]ublic records and government documents available from reliable
22 sources on the Internet, such as websites run by governmental agencies” (quotation marks and
23 citation omitted) (alteration in original)). Exhibits 3 and 4 are available for public viewing in the
24 Santa Clara County Recorder’s Office and the Santa Cruz County Recorder’s Office
25 (respectively). “Under Federal Rule of Evidence 201(b), publicly-recorded real estate instruments
26 and notices are the proper subject of judicial notice, unless their authenticity is subject to
reasonable dispute.” *Mulhall v. Wells Fargo Bank, N.A.*, 241 F. Supp. 3d 1046, 1050 (N.D. Cal.
2017) (taking judicial notice of official records recorded in the San Mateo County Recorder’s
Office); *Corral v. Select Portfolio Servicing, Inc.*, 2014 WL 3900023, at *1 n.1 (N.D. Cal. Aug. 7,
2014) (taking judicial notice of various documents recorded in the Alameda County Recorder’s
Office). Exhibits 3 and 4 are publicly-recorded documents, filed at county recorder officers, and
are thus subject to judicial notice. Accordingly, the Court **GRANTS** Defendant’s requests for
judicial notice. Because this information is publicly available, it is no longer confidential and thus
Defendant’s administrative motion to file portions of its motion to dismiss under seal is **DENIED**.
See Space Data Corp. v. Alphabet Inc., 2019 WL 2305278, at *1 (N.D. Cal. May 30, 2019)
 (“When considering a sealing request, a strong presumption in favor of access is the starting
point.”).

27 Case No.: [5:19-cv-00744-EJD](#)

28 ORDER GRANTING DEFENDANT’S MOTION TO DISMISS; ORDER DENYING IN PART
AND GRANTING IN PART DEFENDANT’S ADMINISTRATIVE MOTION TO FILE PARTS
OF ITS MOTION TO DISMISS UNDER SEAL

1 judicial notice of the fact that the telephone numbers and addresses of the limited partners are
2 readily available in the public domain. Mot. at 10 n.8. Publicly available online resources, like
3 LexisNexis Public Records, permit subscribers to search millions of public records to locate
4 individuals' addresses and other contact information, like phone numbers. *See LEXISNEXIS,*
5 *LexisNexis Public Records*, [https://www.lexisnexis.com/en-us/products/public-](https://www.lexisnexis.com/en-us/products/public-records.page#section-2)
6 records.page#section-2 (last visited Dec. 2, 2019). The fact that Defendant "paid money to obtain
7 Moreland's proprietary information" and used LexisNexis Public Records does not change the fact
8 that Plaintiffs' limited partners' addresses and phone numbers were already publicly disclosed.
9 Opp. at 4, 7; *Wells Fargo Bank, N.A. v. Wrights Mill Holdings, LLC*, 127 F. Supp. 3d 156, 166–67
10 (S.D.N.Y. 2015) ("With respect to the LexisNexis database search, it is publicly available, and
11 case law supports taking judicial notice of it.").

12 Defendant contends it used LexisNexis Public Records, White Pages online, and other
13 publicly available online resources to identify the address and phone numbers of Plaintiffs' limited
14 partners. Declaration of Adam McNutt ("McNutt Decl.") ¶ 11, Dkt. 29-1. Plaintiffs rebut this by
15 pointing this Court toward Paragraph 23 of the First Amended Complaint, which summarily
16 alleges Defendant used "improper means" to determine the limited partners' personal information.
17 FAC ¶ 23; cf. *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009) (noting that legal
18 conclusions alone are "insufficient to avoid a Rule 12(b)(6) dismissal"). The Court need not give
19 weight to Plaintiffs' conclusory contention that Defendant used "improper means" to learn the
20 limited partners' addresses and phone numbers. Moreover, on the public docket, filed with
21 Plaintiffs' initial Complaint, is an Exhibit. *See* Complaint, Ex. A, Dkt. 1. This Complaint
22 includes the addresses of four limited partners (the supposed trade secrets). *Accord Memry Corp.*,
23 2006 WL 3734384, at *4 (unprotected disclosure of a trade secret terminates its existence).
24 Accordingly, because the limited partners' addresses and numbers can be accessed on publicly
25 available databases—see Exhibits 1–5 (including some of the limited partners addresses and
26 phone numbers), the public docket for this case, and databases like LexisNexis—the names,
27 Case No.: [5:19-cv-00744-EJD](#)

28 ORDER GRANTING DEFENDANT'S MOTION TO DISMISS; ORDER DENYING IN PART
AND GRANTING IN PART DEFENDANT'S ADMINISTRATIVE MOTION TO FILE PARTS
OF ITS MOTION TO DISMISS UNDER SEAL

1 addresses, and phone numbers of the limited partners are not protectable trade secrets.

2 Third, Defendant contends that it did not receive the social security numbers of the limited
3 partners. Mot. at 5, 16. The only social security numbers shown to be disclosed to Defendant are
4 the ones publicly filed in Exhibits 3–5.⁴ Further, the Court rejects Plaintiffs’ conclusory
5 allegations that Defendant used “improper means” to access limited partners’ social security
6 numbers. FAC ¶ 23. Such threadbare pleading is entitled no deference. *Ashcroft*, 556 U.S. at
7 678. Notably, the solicitation letter specifically instructed interested limited partners *not* to send
8 their social security number with their K-1 form. *See* FAC, Ex. A; McNutt Decl. ¶ 14. The letters
9 and email are thus devoid of any inclination that Defendant obtained *or* used improper means to
10 obtain the limited partners’ social security numbers and Plaintiffs do not provide any credible
11 allegation to the contrary.

12 Lastly, the Court rejects Plaintiffs’ arguments rebutting Defendant’s motion to dismiss.
13 First, to the extent a “zone of privacy” or “reasonable expectation of privacy” exists in trade secret
14 law (the Court, like Defendant, are dubious such “privacy” terms are appropriate in the trade
15 secret context), Plaintiffs have no such expectation of privacy in publicly available information.
16 *See* Opp. at 6. Second, and relatedly, the issue in trade secret law is whether the information is
17 *secret*, someone’s expectation of privacy in that information is irrelevant. Hence, Plaintiffs’
18 contention that the certificate of limited partnership was required to be filed with the California
19 Secretary of State/the local county clerk is immaterial. Opp. at 8. Indeed, the fact that California
20 required Exhibits 1–5 to be filed means the names and information therein cannot be a trade
21 secret. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1002 (1984) (“Because of the intangible
22 nature of a trade secret, the extent of the property right therein is defined by the extent to which
23 the owner of the secret *protects his interest from disclosure to others.*” (emphasis added)). The

24 _____
25 ⁴ Due to the sensitive nature of this information, even though it is publicly available on the
26 California Secretary of State Website, the Court instructs Defendant’s to refile its Motion to
Dismiss with unredacted exhibits, except as to the social security number which appears in
Exhibits 3–5.

27 Case No.: [5:19-cv-00744-EJD](#)

28 ORDER GRANTING DEFENDANT’S MOTION TO DISMISS; ORDER DENYING IN PART
AND GRANTING IN PART DEFENDANT’S ADMINISTRATIVE MOTION TO FILE PARTS
OF ITS MOTION TO DISMISS UNDER SEAL

1 public filing of Exhibits 1–5 extinguished any trade secrets once contained within the documents.
2 Likewise, Defendant’s ability to access the limited partners’ phone numbers and addresses on a
3 database like LexisNexis, regardless of the cost, means the information on the database cannot be
4 a trade secret as it is not *secret*. *See Liberty Mut. Ins. Co.*, 1994 WL 715613, at *4 (noting that
5 information that is readily obtainable through public sources cannot “derive the independent
6 economic value necessary” to qualify as a trade secret). Finally, Plaintiffs have alleged no facts
7 from which this Court can infer Defendant obtained or improperly obtained the limited partners’
8 social security numbers. Rather, the contrary seems to be shown. Accordingly, Defendant’s
9 motion to dismiss Plaintiffs’ trade secret claim is **GRANTED**.

10 **B. Unfair Competition**

11 Count III asserts a claim for unfair competition pursuant to California’s Unfair
12 Competition Law (“UCL”). California’s UCL “broadly prohibits ‘any unlawful, unfair, or
13 fraudulent business act or practice.’” *Boschma v. Home Loan Ctr., Inc.*, 129 Cal. Rptr. 3d 874,
14 893 (Ct. App. 2011) (quoting Cal. Bus. & Prof. Code § 17200). To have statutory standing to
15 pursue a UCL claim, a person “must have suffered injury in fact and [] lost money or property as a
16 result of the unfair competition.” Cal. Bus. & Prof. Code § 17204; *see also Ruiz v. Gap, Inc.*, 540
17 F. Supp. 2d 1121, 1127 (N.D. Cal. 2008) (“[T]o pursue either an individual or a representative
18 claim under the California unfair competition law, a plaintiff must have suffered an injury in fact
19 and lost money or property as a result of such unfair competition.” (citation and quotation marks
20 omitted)).

21 Plaintiffs rest their UCL claim on the contention that “Moreland’s fiduciary duty compels
22 it to protect and defend its limited partners from harassment.” FAC ¶ 47. Assuming this is true, it
23 still fails to show that Plaintiffs lost any money or property through the alleged harassment. *See*
24 *Ruiz*, 540 F. Supp. 2d at 1127 (noting to show a UCL violation, the plaintiff must have suffered
25 some economic harm). In rebuttal, Plaintiffs recite paragraph 47 of the FAC. *See* Opp. at 10. But
26 this does not save their UCL claim—Plaintiffs simply reallege that they *will be* damaged if

27 Case No.: [5:19-cv-00744-EJD](#)
28 ORDER GRANTING DEFENDANT’S MOTION TO DISMISS; ORDER DENYING IN PART
AND GRANTING IN PART DEFENDANT’S ADMINISTRATIVE MOTION TO FILE PARTS
OF ITS MOTION TO DISMISS UNDER SEAL

1 Defendant “drains the assets of the partnership.” FAC ¶ 47. An allegation that Plaintiffs and/or
2 their limited partners *will* sustain financial harm from Defendant’s predatory tactics fails to plead a
3 UCL claim. A fear or risk of future loss, especially without any concrete showing that the loss
4 will even occur, cannot show that Plaintiffs “lost money or property” as a result of Defendant’s
5 alleged unfair competition. Indeed, Plaintiffs have not, and cannot, allege that they have lost
6 money or property because “Defendant has not . . . purchased an interest from Plaintiffs’ limited
7 partners.” Reply at 9. Accordingly, because Plaintiffs have not shown an actual loss of money or
8 property, Defendant’s motion to dismiss Plaintiffs’ UCL claim is **GRANTED**.

9 **C. Intentional Interference with Contractual Relations**

10 Count IV asserts a claim for intentional interference with contractual relations. To state a
11 claim for intentional interference with contractual relations under California law, Plaintiffs must
12 show (1) a valid contract between Plaintiffs’ and the limited partners; (2) Defendant’s knowledge
13 of this contract; (3) Defendant’s intentional acts designed to induce breach or disruption of the
14 contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5)
15 resulting damage. *Codexis, Inc. v. Enzymeworks, Inc.*, 2016 WL 4241909, at *4 (N.D. Cal. Aug.
16 11, 2016) (citing *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 791 P.2d 587, 589–90 (Cal. 1990)).

17 Plaintiffs’ allegations supporting its intentional interference claim are simply recitations of
18 the elements comprising an intentional interference cause of action. *See* FAC ¶¶ 50–57 (alleging
19 “Defendant knew that the partnership agreement restricted the transfer of said interests” but not
20 alleging how Defendant knew). Such threadbare recitations cannot survive a Rule 12(b)(6) motion
21 to dismiss. *Ashcroft*, 556 U.S. at 678.

22 More notably, this Count suffers from the same fate as Count III. Plaintiffs never allege
23 that Defendant *has* received any shares from a limited partner and so Plaintiffs cannot show the
24 fifth factor listed above, *i.e.*, that they were damaged by any alleged intentional interference.
25 Moreover, the partnership agreement does not explicitly forbid transferring partnership interests.
26 To the contrary, it allows a limited partner to “sell, transfer, assign, encumber or otherwise

27 Case No.: [5:19-cv-00744-EJD](#)
28 ORDER GRANTING DEFENDANT’S MOTION TO DISMISS; ORDER DENYING IN PART
AND GRANTING IN PART DEFENDANT’S ADMINISTRATIVE MOTION TO FILE PARTS
OF ITS MOTION TO DISMISS UNDER SEAL

1 dispose” of their interest if the General Partners agree to such a transfer. *See Opp.* at 11–12 (citing
2 agreements). Accordingly, because the contract between Plaintiffs and their limited partners was
3 terminable upon notice and approval, “a claim for interference with the contract is improper as a
4 matter of law” since no breach would have occurred had a limited partner agreed to sell their
5 interest to Defendant. *See Transcription Commc'n Corp. v. John Muir Health*, 2009 WL 666943,
6 at *9 (N.D. Cal. Mar. 13, 2009). Plaintiffs do not allege that Defendant advocated for limited
7 partners to breach the contract by urging limited partners to sell the interest without approval from
8 the general partners. Plaintiffs’ intentional interference claim thus fails as a matter of law and
9 Defendant’s motion to dismiss this claim is **GRANTED**.

10 **IV. CONCLUSION**

11 For the above reasons, the Court **GRANTS** Defendant’s motion to dismiss and **DENIES**
12 Defendant’s administrative leave to file portions of its motion under seal. Defendant shall refile
13 its motion to dismiss with unredacted exhibits, except as to the social security numbers listed in
14 Exhibits 3, 4, 5.

15 When dismissing a complaint, a court should grant leave to amend “unless it determines
16 that the pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203
17 F.3d 1122, 1127 (9th Cir. 2000). The Court finds amendment would not be futile. Accordingly,
18 Plaintiffs’ trade secret (except as to the disclosed names and addresses available on this docket and
19 in Exhibits 1–5), UCL claims, and intentional interference claims are dismissed with leave to
20 amend. Plaintiffs may file an amended complaint by **January 7, 2020**. Plaintiffs may not add
21 new claims or parties without leave of the Court or stipulation by the parties pursuant to Federal
22 Rule of Civil Procedure 15.

23 **IT IS SO ORDERED.**

24 Dated: December 12, 2019



25
26 EDWARD J. DAVILA
United States District Judge

27 Case No.: [5:19-cv-00744-EJD](#)
28 ORDER GRANTING DEFENDANT'S MOTION TO DISMISS; ORDER DENYING IN PART
AND GRANTING IN PART DEFENDANT'S ADMINISTRATIVE MOTION TO FILE PARTS
OF ITS MOTION TO DISMISS UNDER SEAL